

1895-004
Lee Co.

Maritime Causes: W. S. Ball vs. Louisville & Nashville Railroad Co.]

CA- Contract Dispute
T- Property
Transportation

AUG 10 1888

ONESVILLE,
LEE CO.

DATE CITY,
SCOTT CO.

1 To the Hon. H. K. Morrison Judge
2 of the Circuit Court of Lee
3 County, Virginia:

4 Your orator M. S. Ball, who
5 humbly complaining would
6 respectfully represent that on
7 the 31st day of August 1889, he
8 made and executed to the Louis-
9 ville & Ashville Rail Road Company,
10 a body corporate, under and by
11 virtue of the laws of Kentucky
12 and Virginia, and doing business
13 in the state of Virginia, for a right
14 of way over and through your
15 orators land, situated in said County,
16 near Balls Bridge and to the west
17 thereof. The distance and number
18 of acres and particular description
19 of the land so conveyed is fully
20 shown by a copy of said deed
21 herewith filed, as part hereof marked
22 "Deed"

23 The land through which this road
24 and right of way passes is in
25 the Daniels Valley, and the lands are
26 gently rolling, except along the
27 banks of Indian Creek, where they
28 break off into cliffs and high
29 banks in places. At other points
30 they are level and smooth; the said
31 road is located and now constructed
32 as far as it passes through your

1 orators land, ~~along~~ near the said
2 Indian Creek, and on the north bank
3 thereof, in places running near the
4 Creek and at others further away;
5 your orator resides, and much of his
6 best land lies north of the Rail Road;
7 but much of his timber and pasture
8 land, lie south of the Rail Road and
9 on both sides of Indian Creek; so that
10 in the use of the pasture land, and
11 timber land, he has to cross both
12 the Rail Road, and Indian Creek, and
13 his fields are, and always have been
14 fenced in the main by cross fences
15 running north & south at nearly
16 right angles to the Rail Road and
17 Indian Creek - so that it was ap-
18 parent in the effort to locate said
19 road that in passing the bends in
20 said Creek irregular portions of his
21 fields would be cut off between
22 the Rail Road and Indian Creek, and
23 thus greatly derange, and interfere
24 with the situation of said fields and
25 farm; and materially affect their use & convenience
26 Owing to this fact and fearing
27 a contention, as to the necessary cross-
28 ings and cattle guards your orator
29 would not make said deed, with-
30 out stating plainly therein, upon
31 what condition it was made, and
32 so by an inspection thereof it

1 will be seen, That in Consideration,
2 among other things, that said Rail Road
3 Company, "erect, maintain and keep
4 in good repair suitable, Convenient and
5 necessary Crossings, and Cattle guards
6 at such points as said Rail (Yours crator)
7 shall designate over said road" he conveys.

8 Your crator has repeatedly called
9 upon the road Master, Section Super
10 or foreman, engineers and even the
11 Genl. Manager, to put in for him
12 so much as two very badly needed
13 Crossings, and to construct the cattle
14 guards as to turn the stock. - In
15 response to this, the road men put
16 in one Crossing at the proper point;
17 but soon thereafter ~~erected~~ cut the same
18 so that it can not be used, and thus
19 leaves a valuable piece of land, of
20 about 15 acres, with no possible way
21 ^{to get to} it, except over the ordinary track
22 of a rail road and this, at a point
23 usually used for a farm, road before
24 the rail road was constructed.

25 The ~~so~~ ^{case} cattle guards between the fields
26 and other farms serves no practical
27 purpose, Cattle, hogs & horse pass
28 over them, with but very little trouble
29 They are mere, slats put down length-
30 wise, with no pit; and the stock pass
31 but very little attention thereto.
32 And by reason of their defects, your

1 has suffered great trouble in con-
2 venience and damage, to his grain, grass
3 & Crops - The said road made an other
4 effort or two, to put in a crossing
5 one at a steep bank or cut up
6 which no animal, such, as a horse,
7 Cow sheep or Hogs could possibly
8 pass, on the north side, and reaching
9 cut - on the south side, it went
10 down some ten feet - over a cliff
11 & steep bank into Indian Creek, this
12 they abandoned, & afterwards here cut.
13 Your orator has often called on the
14 Atty for the road and asked that the
15 Crossings & Cattle guards be put in
16 at the points designated by him,
17 Your orator, so, as to enable him to
18 use & enjoy his property. The farm
19 is a large and valuable one, and
20 used for grazing and agisting pur-
21 poses, as well, as for grain; and the
22 failure to make these Crossings, and
23 Cattle guards has greatly in-
24 convenience and damaged Your
25 orator, these damages resulting from
26 this neglect has caused Your orator, out
27 less than \$1000. & damages; and by the fail-
28 ure to construct sufficient Cattle guards
29 he has sustained not less than \$500, & to
30 grass grain & Crops by the intrusion of
31 stock passing in over & through said
32 defective Cattle guards, none of which has
ever been paid.

(5).

1 As before stated, this farm is at a
2 place long known, as Bulls bridges
3 that is where the main valley state
4 road crosses Indian Creek, and at
5 this place, has long been a trading
6 post & place of public gathering.
7 By reference to said deed it will
8 be seen that part of the Consider-
9 ation of said deed was the benefit
10 that was to flow to your crater by
11 reason of the construction of said
12 road. no possible benefit could
13 flow to him, unless, as was then gen-
14 erally understood said road would
15 make a side track and stop, at that
16 place. That was what he, ^{your crater,} was in-
17 duced to believe would be done, by
18 the atty procuring said deed, and the
19 engineer in Chief, of the road, at the
20 time of construction - And right at this
21 point your crater, has a store dwelling
22 house for his employees, and other build-
23 ings, and it became necessary, ow-
24 ing to the flat surface of the ground to
25 cut two ditches, leading through them
26 landy one to the east & one to the west
27 of the County road, where it crosses the
28 rail road, and both leading direct to
29 Indian Creek, some 150 feet or more
30 The resident engineer, one Jackson
31 in charge of the work at that point,
32 applied to your crater to cut these ditches

1 over and through your craters cuts and
2 lands; at that time, your crater be-
3 gan to suspect that said Company did
4 not intend to make said stop, as he had
5 been led to believe, and he positively
6 refused to grant the privilege, until
7 the ~~road~~ ^{Company} agreed to put in the side
8 track and make the stop. This the said
9 Jackman finally agreed to, and cut
10 the ditches now used and enjoyed by said
11 road upon that Contract and agree-
12 ment and no other; and your crater
13 was further misled, because there was
14 a side track put in, and stops of
15 the train made at the point during
16 Construction - but when the road was
17 completed this was torn out and car-
18 ried away, and claimed to be the prop-
19 erty of the Stone Contractor; for it
20 had been mostly used for loading
21 Stone quarried near by.

22 Your crater is advised that, ^{that} ~~it~~ was a
23 parole Contract for real estate
24 executed fully upon his part, pos-
25 session taken and still retained by
26 said ~~road~~ ^{Company} which continues in the
27 use and enjoyment of
28 said ditches under said Contract with
29 said Jackman; that such occupancy
30 is an acceptance upon its part, and
31 a ratification of said Jackman's
32 act, if in fact he did not have
express power to make the same.

1 that this acceptance binds said
2 Company to its performance of its
3 part of said Contract; and that
4 a Court of equity will specifically
5 execute this Contract; or make said
6 ~~Company~~ pay in damages for its
7 failure, to ~~to~~ so. This failure to so,
8 Construct the mill track and make its
9 Stop Contracted for, damages your
10 Crater not less than \$5000. ~~as~~ and he
11 avers, that he would not have given
12 his consent to the cutting of the ditches,
13 aforesaid, had not said Jackman
14 made the agreement mentioned: and it
15 would have cost the said road great
16 labor & expense to have, had to do
17 otherwise than use said ditches as
18 Contracted for by said Jackman.

19 Your Crater further states that the
20 daily damage done him, by failing
21 to make said Creeping & Cattle guards
22 or failing to make said Stop one such
23 that does not have an adequate
24 remedy at law, and no mode could
25 be invented by which, he could be
26 compensated for the said road, ^{failing} to keep
27 and perform its Contract.

28 Besides your Crater is advised that a
29 Court of equity will decree specific
30 performance where one party has
31 complied with the terms; and the Crater
32 has failed on its part but taken the

1 benefit, derive from the part perform
2 ance of the other party - your orator
3 alleges, that he has fully performed his
4 part - of the Contract mentioned in said
5 deed, and made by parole with
6 said Jackman. That said road
7 has accepted the right of way con-
8 veyed by said deed, and has the use
9 Control & benefit of the two ditches
10 cut by said Jackman under the Con-
11 tract with him.

12 Your orator further states, that said
13 road in its Construction, has gone
14 out of its right of way, Cut Chan-
15 nels for Indian Creek upon your
16 orator's land, has Cut and dam-
17 aged said land in many places & set
18 in and upon it, by said depositions
19 Cattle guards, Cattle, hogs, Sheep &
20 horses to the damage of \$1000.00, to your
21 Complainant.

22 The object of this bill therefore
23 is:

24 First - To have specifically performed
25 the Contract Agreement and Conditions and
26 stipulations contained in said deed
27 and such Cattle guards & crossings as are
28 there set out, made at such points,
29 as your orator may designate and
30 point out.

31 That the Contract made with said
32 Jackman be specifically performed

1 and a side track put-out the point
 2 designated and regular stops of Trains
 3 made at that point -
 4 that an enquiry ^{be directed} to a Commission
 5 or a jury ^{empowered} upon the law side of
 6 this Hon Court be directed to enquire
 7 and ascertain the damages already
 8 done by said Road; failure to
 9 keep & perform its Contract and
 10 agreement, and the damage done by
 11 its failure to construct suitable
 12 crossing Cattle guards as specified
 13 by said deed.

14 Or if mistaken, as to this, that an
 15 enquiry of damage be had for
 16 the act & closing of said road to
 17 given croter, land outside its right
 18 of way.

19 Or if not agreeable to the principles
 20 of equity, to enforce said Contract, then
 21 that said deed be set aside held for
 22 naught & Granted void and said parcel
 23 agreement be annulled, the possession
 24 of said ditch be delivered to given
 25 croter and that said road be com-
 26 pelled to pay such damages as have
 27 been sustained by given croter growing
 28 out of the Contract with its said
 29 Jackman; ^{and get out of said deed.} And should said deed be
 30 set aside then that an enquiry be
 31 made, as to the value of its said Estate
 32 and the damage done to the residue of

1 of said fact.

2 To affect which your orator prays
 3 that the Louisville and Nashville
 4 Rail Road Company a body Cor-
 5 porate under & by virtue of its
 6 laws of Kentucky & Virginia doing
 7 business in Virginia be made a
 8 ~~party~~ defendant to this bill
 9 and answer the allegations thereof
 10 upon oath and upon a hearing
 11 a decree be rendered, specific-
 12 ally performing the terms of the Con-
 13 tract set out in said deed; and
 14 specifically performing the terms of
 15 the parol Contract made with said
 16 Jackson and hereinbefore fully
 17 set out. That an enquiry be
 18 made of the damages mentioned
 19 in said bill, and that the same be
 20 decreed by your orator; and if in
 21 any wise mistaken as to the measure
 22 and mode of relief then ^{that} he be
 23 granted all such other further and
 24 general relief as he may be enti-
 25 tled to in a Court of Equity. May
 26 *supra* issue.

27 A. F. Onielmae

28 p.g.
 29
 30
 31
 32

Plff's Costs
C 5.69

8 5.32
\$6.19

Def's Costs
C 2.44

Atty 15.00
\$17.44

W. S. Ball

vs Bill Chis

L. & A. R. R. Co

1893 1st Sept. Rules Bill filed
Spa Exd & Decree issd.

" 2d Sept. Rules D. N. Conf
Cause set for hearing
by Plaintiff

" Nov Term contd
1894 Contd this year

1895 March Term contd
" June Term Decree
final See Chas Order
Book Page 242

M.S. Ball,

Plaintiff.

vs.

In Chancery.

L. & N.R.R. Co.

Defendant.

This cause came on this day to be heard upon the bill of the complainant and exhibits therewith, the demurrer and answer ~~and~~ answer of the defendant and exhibit therewith, joinder by the complainant in said demurrer, and was argued by counsel. On consideration whereof, the court is of opinion that said bill does not show grounds of equitable relief, and it is therefore adjudged ordered and decreed that said demurrer be and the same is hereby sustained, and that the ~~plaintiff~~ defendant recover of the plaintiff its costs about its defense in this case expended, for which execution may issue, and this cause is stricken from the docket.

Memorandum.-- ~~AND~~ The complainant suggesting that he is aggrieved by this decree, and desires to appeal ~~sixty days~~ from the same, it is ordered that execution be suspended for sixty days from this date.

oooooooooooooooooooooooooooooooooooo

oo

Mr. J. M.

June 15th 1895.